



**Tuvalu**

# **EXCHANGE CONTROL ORDINANCE**

**Act 11 of 1981**





Tuvalu

## EXCHANGE CONTROL ORDINANCE

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Tuvalu

## EXCHANGE CONTROL ORDINANCE

Act 11 of 1981

### AN ORDINANCE TO PROVIDE FOR A SYSTEM OF EXCHANGE CONTROL AND FOR MATTERS INCIDENTAL THERETO

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [7th February 1983]

#### 1 Short title

This Ordinance may be cited as the Exchange Control Ordinance.

#### 2 Interpretation

In this Ordinance, unless the context otherwise requires—"bullion" means gold and includes any metal or coins declared under section 3 to be bullion for the purposes of this Ordinance;

"**currency**" includes coins, currency notes, bank notes, postal orders, money orders, cheques, letters of credit, bills of exchange and promissory notes;

"**foreign currency**" means any currency that is not, or is payable or expressed otherwise than in, Tuvalu currency;

"**foreign exchange**" means foreign currency and foreign securities;

"**foreign securities**" includes—

- (a) any securities the principal of which, or interest from which, is repayable or payable in any country other than Tuvalu or in a foreign currency;

- (b) any securities the funds necessary for the repayment or payment of the principal of, or interest from, which are provided from any country other than Tuvalu;
- (c) any securities that are registered outside Tuvalu;
- (d) any security, debt or right which may be prescribed under section 4 for the purpose of this definition;

“**gold**” means gold coins or gold bullion;

“**securities**” includes shares, stock, bonds, debentures, debenture stock, unsecured notes, transferable or negotiable deposits, treasury bills, units or sub-units of a unit trust (and policies of life or endowment assurance) and also includes deposit receipts in respect of the deposit of any such securities and documents of title of any such securities;

“**the Regulations**” means regulations made under section 4;

“**Tuvalu currency**” means any currency that is, or is payable or expressed in currency that is, legal tender in Tuvalu.

### 3 Power to declare bullion

The Minister may, by order published by notice, declare any metal or coins to be bullion for the purposes of the definition of the expression in section 2.

### 4 Regulations

- (1) The Minister may make regulations with respect to the control of foreign exchange bullion and Tuvalu currency.
- (2) In particular, and without limiting the generality of subsection (1), the Regulations may relate to—
  - (a) the powers, rights; duties and responsibilities of authorised dealers in bullion or foreign exchange and the rates at which they may enter into transactions in foreign exchange or bullion;
  - (b) the buying, selling, borrowing, lending or exchange of foreign currency or bullion;
  - (c) any dealing or transaction having the effect of a purchase, sale, borrowing, loan, or exchange of foreign currency or bullion;
  - (d) the taking or sending out of Tuvalu or Tuvalu currency, foreign currency or bullion;
  - (e) transaction in Tuvalu currency with or on behalf of persons resident outside Tuvalu;

- (f) a requirement that any person who has power to sell, or procure the sale of, any foreign currency or bullion, shall sell or procure the sale of the currency or bullion, in accordance with the Regulations;

7 of 1952, 16 of 1957 G.N. 178/60 8 of 1971, 9 of 1971 L.N.I6/72 13 of 1972 (Cap. 51 of 1973) G.N.I63/56

**AN ORDINANCE TO CONFER POWER, AND IMPOSE DUTIES AND RESTRICTIONS, IN RELATION TO GOLD, CURRENCY, PAYMENTS, SECURITIES, DEBTS, AND THE IMPORT, EXPORT, TRANSFER AND SETTLEMENT OF PROPERTY, AND FOR PURPOSES CONNECTED WITH THE MATTERS AFORESAID**

Commencement: 15th July 1953

**PART I - GOLD AND FOREIGN CURRENCY**

**1 Dealings in gold and foreign currency**

- (1) Except with the permission of the Minister, no person, other than an authorised dealer, shall, in Tuvalu, buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorised dealer.
- (2) Except with the permission of the Minister, no person resident in the scheduled territories, other than an authorised dealer, shall, in Tuvalu, do any act which involves, is in association with or is preparatory to buying or borrowing any gold or foreign currency from, or selling or lending any gold or foreign currency to, any person outside Tuvalu.
- (3) Where a person buys or borrows any gold or foreign currency in Tuvalu or, being a person resident in the scheduled territories does any act which involves, is in association with or is preparatory to the buying or borrowing of gold or foreign currency outside Tuvalu, he shall comply with such conditions as to the use to which it may be put or the period for which it may be retained as may from time to time be notified to him by the Minister.
- (4) In this Ordinance —
- (a) the expression “foreign currency” does not include any currency or notes issued by the Government or under the law of any part of the scheduled territories but, save as aforesaid, includes any currency other than sterling or Fiji, Australian or New Zealand dollars and

any notes of a class which are or have at any time been legal tender in any territory outside Tuvalu, and any reference to foreign currency, except so far as the context otherwise requires, includes a reference to any right to receive foreign currency in respect of any credit or balance at a bank; and

- (b) the expression “the scheduled territories” means the territories specified in Schedule 1, so, however, that the Minister may at any time by order amend the said Schedule, either by the addition or exclusion of territories or otherwise, and the said expression shall be construed accordingly.

*Schedule 1*

## **2 Surrender of gold and foreign currency**

- (1) Every person in Tuvalu who is entitled to sell, or to procure the sale of, any gold, or any foreign currency to which this section applies, and is not an authorised dealer, shall offer it, or cause it to be offered, for sale to an authorised dealer, unless the Minister consents to his retention and use thereof or he disposes thereof to any other person with the permission of the Minister.

The foreign currency to which this section applies is such foreign currency (hereafter in this Ordinance referred to as “specified currency”) as may from time to time be specified by order of the Minister.

- (2) If a person who has obtained the consent of the Minister to his retention and use of any gold or specified currency, and has stated in an application for the consent that he requires it for a particular purpose, no longer requires the gold or currency for that purpose, the preceding subsection shall thereupon apply to him in relation to that gold or currency as if the Minister had revoked his consent to his retention and use thereof.
- (3) A person who acquires any gold or specified currency from an authorised dealer shall be treated for the purposes of this section as if the Minister had consented to the retention and use by him of that gold or currency (subject, however, to any conditions notified to him in accordance with subsection (3) of the preceding section), and as if any statement made by him in an application for that gold or currency as to the purpose for which he requires it had been made by him in an application for the Minister’s consent to his retention and use thereof.
- (4) Where a person has become bound under this section to offer or cause to be offered any gold or specified currency for sale to an authorised dealer, he shall not be deemed to comply with that obligation by any offer made or caused to be made by him, if the offer is an offer to sell at a price exceeding that authorised by the Minister, or without payment of any

usual and proper charges of the authorised dealer, or otherwise on any unusual terms.

- (5) Where a person has become bound under this section to offer or cause to be offered any gold or specified currency for sale to an authorised dealer and has not complied with that obligation, the Minister may direct that that gold or currency shall vest in the Minister, and it shall vest in the Minister accordingly free from any mortgage, pledge or charge, and the Minister may deal with it as he thinks fit, but the Minister shall pay to the person who would but for the direction be entitled to the gold or currency such sum as he would have received therefor if he had sold it to an authorised dealer in pursuance of an offer made under this section at the time when the vesting occurred.
- (6) In any proceedings in respect of a failure to comply with the provisions of this section, it shall be presumed, until the contrary is shown, that the gold or currency in question has not been offered for sale to an authorised dealer.

### **3 Bailees of gold and foreign currency**

- (1) Every person in Tuvalu by whom or to whose order (whether directly or indirectly) any gold or any specified currency in the form of notes is held in Tuvalu but who is not entitled to sell it or procure its sale shall notify the Minister in writing that he holds that gold or currency.
- (2) The Minister may direct any person in Tuvalu by whom or to whose order (whether directly or indirectly) any gold or any specified currency in the form of notes is held in Tuvalu, whether or not he is entitled to sell it or procure its sale, to cause that gold or currency to be kept at all times in the custody of such banker as may be specified in the direction.

### **4 Travellers' cheques, etc.**

- (1) This section applies to any document of a kind intended to enable the person to whom the document is issued to obtain foreign currency from some other person on the credit of the person issuing it, and in particular to any traveller's cheque or other draft or letter of credit so intended.
- (2) For the purposes of this Ordinance, the person issuing a document to which this section applies, and the person to whom it is issued, shall be deemed respectively to sell and buy foreign currency and where foreign currency is obtained by means of the document to sell and buy that foreign currency"
- (3) Any such document not expressed in terms of sterling or Fiji, Australian or New Zealand dollars shall, if it is of a kind intended to enable the

person to whom it is issued to obtain any specified currency, be treated also for the purposes of this Ordinance as itself being specified currency.

- (4) Every person in Tuvalu who holds or to whose order there is held any document to which this section applies, being a document expressed in terms of sterling or Fiji, Australian or New Zealand dollars, shall encash it or cause it to be encashed in the scheduled territories with the person issuing it or with a banker, unless the Minister consents to his retention and use thereof and, where in his application for that consent he has stated that he requires it for a particular purpose, unless also he still requires it for that purpose.
- (5) A person who acquires any document to which the last preceding subsection applies from an authorised dealer shall be treated for the purposes of that subsection as if the Minister had consented to the retention and use by him of that document (subject, however, to any conditions notified to him in accordance with section 1 (3), and as if any statement made by him in an application for that document as to the purpose for which he requires it had been made by him in an application for the Minister's consent to his retention and use thereof.

## PART II - PAYMENTS

### 5 Payments in Tuvalu

Except with the permission of the Minister, no person shall do any of the following things in Tuvalu, that is to say —

- (a) make any payment to or for the credit of a person resident outside the scheduled territories; or
- (b) make any payment to or for the credit of a person resident in the scheduled territories by order or on behalf of a person resident outside the scheduled territories; or
- (c) place any sum to the credit of any person resident outside the scheduled territories:

Provided that where a person resident outside the scheduled territories has paid a sum in or towards the satisfaction of a debt due from him, paragraph (c) shall not prohibit the acknowledgement or recording of the payment.

### 6 Payments outside Tuvalu

- (1) Except with the permission of the Minister, no person in Tuvalu shall, subject to the provisions of this section, make any payment outside Tuvalu

to or for the credit of a person resident outside the scheduled territories, and no person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to the making of any such payment.

- (2) Nothing in this section shall prohibit the doing of anything otherwise lawful by any person with any foreign currency obtained by him in accordance with the provisions of Part I or retained by him in pursuance of a consent of the Minister.

## **7 Compensation deals**

- (1) Except with the permission of the Minister, no person shall in Tuvalu make any payment to or for the credit of a person resident in the scheduled territories, and no person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to the making of any such payment outside Tuvalu, as consideration for or in association with —
  - (a) the receipt by any person of a payment made outside the scheduled territories, or the acquisition by any person of property which is outside the scheduled territories; or
  - (b) the transfer to any person, or the creation in favour of any person, of a right (whether present or future, and whether vested or contingent) to receive a payment outside the scheduled territories or to acquire property which is outside the scheduled territories.
- (2) Nothing in this section shall prohibit the making of any payment in accordance with the terms of a permission or consent granted under this Ordinance.

## **PART III - SECURITIES**

### **8 Issue of securities**

- (1) Except with the permission of the Minister, no person shall in Tuvalu issue any security or do any act which involves, is in association with or is preparatory to the issuing outside Tuvalu of any security which is registered or to be registered in Tuvalu, unless the following requirements are fulfilled, that is to say —
  - (a) neither the person to whom the security is to be issued nor the person, if any, for whom he is to be a nominee is resident outside the scheduled territories; and

- (b) the prescribed evidence is produced to the person issuing the security as to the residence of the person to whom it is to be issued and that of the person, if any, for whom he is to be a nominee.
- (2) The subscription of the memorandum of association of a company to be formed under the law of Tuvalu relating to companies, by a person resident outside the scheduled territories, or by a nominee for another person so resident, shall, unless he subscribes the memorandum with the permission of the Minister, be invalid in so far as it would on registration of the memorandum have the effect of making him a member of or shareholder in the company, so, however, that this provision shall not render invalid the incorporation of the company; and if by virtue of this subsection the number of the subscribers of the memorandum who on its registration become members of the company is less than the minimum number required to subscribe the memorandum, the provisions of the said law relating to the carrying on of business of a company the number of whose members is reduced below the legal minimum shall apply to the company as if the number of its members had been so reduced.

## 9 Transfer of securities and coupons

- (1) Except with the permission of the Minister, a security registered in Tuvalu shall not be transferred, and a security not so registered shall not be transferred in Tuvalu, unless, in either case, the following requirements are fulfilled, that is to say —
  - (a) neither the transferor nor the person, if any, for whom he is a nominee is resident outside the scheduled territories; and
  - (b) the transferor delivers to the transferee at or before the time of the transfer the prescribed declarations as to his residence and that of the person, if any, for whom he is a nominee; and
  - (c) neither the transferee nor the person, if any, for whom he is to be a nominee is resident outside the scheduled territories; and
  - (d) except where the security is registered in Tuvalu otherwise than in a subsidiary register, the Minister is satisfied that the requirements of paragraph (c) of this subsection are fulfilled:

Provided that —

- (i) neither the transferee nor his agent shall be deemed to have committed an offence by reason only that the requirements of paragraph (a) were not fulfilled unless the transferee or, as the case may be, his agent, knew or had reason to believe that those requirements were not fulfilled; and
- (ii) neither the transferor nor his agent shall be deemed to have committed an offence by reason only that any of the

requirements of paragraphs (c) and (d) have not been fulfilled unless, in the case of a non-fulfilment of the requirements of paragraph (c), the transferor or, as the case may be, his agent, knew or had reason to believe that those requirements were not fulfilled.

- (2) Except with the permission of the Minister, a security not registered in Tuvalu shall not be transferred outside Tuvalu if either the transferor or the transferee, or the person, if any, for whom the transferor or transferee is or is to be a nominee, is resident in Tuvalu.
- (3) Except with the permission of the Minister —
  - (a) no coupon shall be transferred in Tuvalu if either the transferee or the person, if any, for whom he is to be a nominee is resident outside the scheduled territories;
  - (b) no person shall in Tuvalu do any act which involves, is in association with or is preparatory to the transfer of any coupon outside Tuvalu if either the transferor or transferee, or the person, if any, for whom the transferor or transferee is or is to be a nominee, is resident in Tuvalu.

## **10 Issue of bearer certificates and coupons**

Except with the permission of the Minister, no person shall, in Tuvalu, issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon, and no person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to such issue or alteration outside Tuvalu.

## **11 Substitution of securities and certificates outside Tuvalu**

Except with the permission of the Minister —

- (1) No person in Tuvalu shall do any act with intent to secure —
  - (a) that a security which is- —
    - (i) registered in Tuvalu; or
    - (ii) transferable by means of a bearer certificate in Tuvalu; becomes, or is replaced by, a security registered outside Tuvalu or a security transferable by means of a bearer certificate outside Tuvalu; or
  - (b) that a certificate of title to any other security, is issued outside Tuvalu in substitution for or in addition to a certificate of title thereto which is in, or is or has been lost or destroyed in, Tuvalu.

- (2) No person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to any such transaction outside Tuvalu as is referred to in paragraphs (a) or (b) of subsection (1).

## **12 Payment of capital moneys outside Tuvalu**

Except with the permission of the Minister —

- (a) no person in Tuvalu shall do any act with intent to secure that capital moneys payable on a security registered in Tuvalu are paid outside Tuvalu; or that, where the certificate of title to a security is in Tuvalu, capital moneys payable on the security are paid outside Tuvalu without production of the certificate to the person making the payment;
- (b) no person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to any such transaction outside Tuvalu as is referred to in paragraph (a).

## **13 Duties of persons keeping registers**

Except with the permission of the Minister, no person concerned with the keeping of any register in Tuvalu shall —

- (a) enter in the register the name of any person in relation to any security unless there has been produced to him the prescribed evidence that the entry does not form part of a transaction which involves the doing of anything prohibited by this Ordinance; or
- (b) enter in the register, in respect of any security, an address outside the scheduled territories, except for the purpose of any transaction for which the permission of the Minister has been granted with the knowledge that it involved the entry of that address; or
- (c) do any act in relation to the register which recognises or gives effect to any act appearing to him to have been done with such intent as is mentioned in the two last preceding sections, whether done by a person in or resident in Tuvalu or not.

## **14 Additional provisions as to nominee holdings**

(1) Where —

- (a) the holder of a security is a nominee and the person for whom he is a nominee is resident outside the scheduled territories; or

- (b) the holder of a security is not a nominee and is resident outside the scheduled territories,
- then, except with the permission of the Minister, no person resident in Tuvalu shall do any act whereby the holder becomes his nominee in respect of the security.
- (2) Except with the permission of the Minister, a person resident in Tuvalu for whom the holder of a security is a nominee shall not do any act whereby —
- (a) the holder, being a person resident outside the scheduled territories, holds the security otherwise than as his nominee; or
- (b) the holder, not being a person resident outside the scheduled territories, holds the security as nominee for a person resident outside the scheduled territories.
- (3) Where the holder of a security is a nominee, then, except with the permission of the Minister, neither he, if he is resident in Tuvalu, nor any person resident in Tuvalu through whose agency the exercise of all or any of the holder's rights in respect of the security are controlled, shall —
- (a) do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives his instructions unless both the person previously instructing him and the person substituted for that person were, immediately before the substitution, resident in the scheduled territories and not elsewhere; or
- (b) do any act whereby he ceases to be a person bound to give effect to the instructions of another person in relation to the security, unless the person who theretofore instructed him is resident in the scheduled territories and not elsewhere.
- (4) Where the holder of a security is not a nominee and is resident in Tuvalu, then, except with the permission of the Minister, he shall not do any act whereby he becomes the nominee of another person in respect of the security, unless that other person is resident in the scheduled territories and not elsewhere.
- (5) No person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to any such transaction outside Tuvalu as is referred to in this section.

## 15 Deposit of certificates of title

- (1) This and the next following section apply to any security except —

- (a) a security which is registered in Tuvalu otherwise than in a subsidiary register, and on which none of the dividends or interest is payable on presentment of a coupon; and
- (b) any such other securities as may be prescribed;

and in the following provisions of this section and in the next following sections the expressions “security”, “certificate of title” and “coupon” mean respectively a security to which the said sections apply, a certificate of title to such a security, and a coupon representing dividends or interest on such a security.

- (2) It shall be the duty of every person by whom or to whose order (whether directly or indirectly) a certificate of title is held in Tuvalu, and of every person resident in Tuvalu by whom or to whose order (whether directly or indirectly) a certificate of title is held outside Tuvalu, to cause the certificate of title to be kept at all times, except with the permission of the Minister, in the custody of an authorised depositary, and nothing in this Part shall prohibit the doing of anything for the purpose of complying with the requirements of this subsection.
- (3) Except with the permission of the Minister, an authorised depositary shall not part with any certificate of title or coupon required under this section to be in the custody of an authorised depositary:

Provided that this subsection shall not prohibit an authorised depositary:

- (a) from parting with a certificate of title or coupon to or to the order of another authorised depositary, where the person from whom the other authorised depositary is to receive instructions in relation thereto is to be the same as the person from whom he receives instructions;
  - (b) from parting with a certificate of title, for the purpose of obtaining payment of capital moneys payable on the security, to the person entrusted with payment thereof;
  - (c) from parting with a coupon in the ordinary course for collection.
- (4) Except with the permission of the Minister, no capital moneys, interest or dividends shall be paid in Tuvalu on any security except to or to the order of an authorised depositary having the custody of the certificate of title to that security, so, however, that this subsection shall not be taken as restricting the manner in which any sums lawfully paid on account of the capital moneys, interest or dividends may be dealt with by the person receiving them.
  - (5) Except with the permission of the Minister, an authorised depositary shall not do any act whereby he recognises or gives effect to the substitution of one person for another as the person from whom he receives instructions in relation to a certificate of title or coupon, unless there is produced to

him the prescribed evidence that he is not by so doing giving effect to any transaction which is prohibited by this Ordinance.

- (6) Where a certificate of title which under this section should for the time being be in the custody of an authorised depositary is not in the custody of an authorised depositary, then, except with the permission of the Minister, no person shall in Tuvalu, buy, sell, transfer, or do anything which affects his rights or powers in relation to, the security, or do any act which involves, is in association with or is preparatory to any such transaction outside Tuvalu.
- (7) Except with the permission of the Minister, no person in or resident in Tuvalu shall, in the case of a certificate of title with coupons (whether attached or on separate coupon sheets), detach any of the coupons otherwise than in the ordinary course for collection.

## 16 Additional provisions as to deposited certificates

- (1) Where a certificate of title to a security is by the last preceding section required to be and is in the custody of an authorised depositary, the provisions of this section shall, except so far as the Minister otherwise directs, have effect in relation thereto until —
  - (a) there are delivered to him the prescribed declarations as to the ownership of the security and the residence of the owners thereof; and
  - (b) in the case of a certificate of title which —
    - (i) would ordinarily be accompanied by coupons (whether attached or on separate coupon sheets); but
    - (ii) when it comes into the custody of the authorised depositary wants, in order to render it complete, any coupons which would not in the ordinary course have been detached for collection,

there have also been deposited with him the coupons so wanting at the time when the certificate of title comes into his custody:

Provided that where the said declarations have been delivered to an authorised depositary and he has parted with the certificate of title, paragraph (a) shall not again apply on the certificate coming into the custody of another authorised depositary or again coming into his own custody”

- (2) Except with the permission of the Minister, the authorised depositary shall not part with or destroy the certificate of title or any coupons belonging thereto, otherwise than as mentioned in paragraphs (b) and (c) of the proviso to section 15 (3), or do any act whereby he recognises or gives

effect to the substitution of one person for another as the person from whom he receives instructions in relation thereto:

Provided that, where the person from whom an authorised depositary receives instructions in relation to any certificate of title becomes bankrupt in Tuvalu or dies, this subsection shall not prohibit the authorised depositary from recognising the trustee in bankruptcy or personal representative as the person entitled to give instructions in relation to the certificate of title.

- (3) The authorised depositary shall place any capital moneys, dividends or interest on the security received by him to the credit of the person by virtue of whose authority he received them, but shall not permit any part of the sums received to be dealt with except with the permission of the Minister.

## **17 Special provisions as to dealings in certain securities**

- (1) The Minister may, if in his opinion there are circumstances rendering it necessary or expedient so to do, by order direct that this section shall apply to such securities as may be prescribed, being securities on which capital moneys, dividends or interest are payable in a specified currency or as respects which the holder has an option to require payment of any capital moneys, dividends or interest thereon in a specified currency.
- (2) Except with the permission of the Minister, no person shall, in Tuvalu, transfer, or do anything which affects his rights or powers in relation to, any security to which this section applies, and no person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to any such transaction outside Tuvalu.

## **18 Validation of certain transfers**

- (1) The title of any person to a security for which he has given value on a transfer thereof, and the title of all persons claiming through or under him, shall, notwithstanding that the transfer, or any previous transfer, or the issue of the security, was by reason of the residence of any person concerned other than the first-mentioned person prohibited by the provisions of this Ordinance relating to the transfer or issue of securities, be valid unless the first-mentioned person had notice of the facts by reason of which it was prohibited.
- (2) Without prejudice to the provisions of subsection (1), the Minister may issue a certificate declaring, in relation to a security, that any acts done before the issue of the certificate purporting to effect the issue or transfer of the security, being acts which were prohibited by this Ordinance, are to

be, and are always to have been, as valid as if they had been done with the permission of the competent authority, and the said acts shall have effect accordingly.

- (3) Nothing in this section shall affect the liability of any person to prosecution for any offence against this Ordinance.

## **19 Application of Part III to secondary securities**

- (1) This Part shall apply, with such modifications (if any), as may be prescribed, in relation to any such document as is mentioned in the following subsection, as if the document created, and were the certificate of title to, a security (hereafter in this Ordinance referred to as a “secondary security”).
- (2) The documents referred to in the preceding subsection are any letter of allotment which may be renounced, any letter of rights, any warrant conferring an option to acquire a security, any deposit certificate in respect of securities (but not including a receipt by an authorised depository for any certificate of title deposited in pursuance of this Part), and such other documents conferring, or containing evidence of, rights as may be prescribed.

## **20 Interpretation of Part III**

- (1) In this Part —
  - (a) the expression “registered” includes inscribed;
  - (b) the expressions “registered in Tuvalu” and “registered outside Tuvalu” mean respectively, registered in a register in, and registered in a register outside, Tuvalu;
  - (c) the expression “security which is registered in Tuvalu otherwise than in a subsidiary register” means a security which either —
    - (i) is registered in Tuvalu and is not and cannot, without the necessity for an entry in the register in Tuvalu, become registered outside; or
    - (ii) is registered both in Tuvalu and outside but on a transfer cannot, without the necessity for an entry in the register in Tuvalu, become registered outside in the name of the transferee; and
  - (d) the expression “a register” includes any book, file or index in which securities are registered.
- (2) For the purposes of any provision of this Part prohibiting the transfer of securities, a person shall be deemed to transfer a security if he executes

any instrument of transfer thereof, whether effective or not, and shall be deemed to transfer it at the place where he executes the instrument.

- (3) References in this Part to the person holding a certificate of title or coupon shall be construed as references to the person having physical custody of the certificate of title or coupon:

Provided that where the certificate of title or coupon is deposited with any person in a locked or sealed receptacle from which he is not entitled to remove it without the authority of some other person, that other person shall be deemed for the purposes of this provision to have the physical custody thereof.

- (4) In this Part, the expression “holder” —
- (a) in relation to a security transferable by means of a bearer certificate or to a coupon, includes the person holding the certificate or coupon; and
  - (b) in relation to a security which is registered in the name of a deceased person, or of any person who, by reason of bankruptcy, unsoundness of mind or any other disability is incapable of transferring the security, means the personal representative, trustee in bankruptcy or other person entitled to transfer the security.
- (5) The holder of a security or coupon shall be deemed for the purposes of this Part to be a nominee in respect thereof if, as respects the exercise of any rights in respect thereof, he is not entitled to exercise those rights except in accordance with instructions given by some other person, and references in this Part to the person for whom the holder of a security or coupon is a nominee shall be construed as references to the person who is entitled to give instructions, either directly or through the agency of one or more persons, as to the exercise of any rights in respect of the security or coupon and is not in so doing himself under a duty to comply with instructions given by some other person:

Provided that —

- (a) a person shall not by reason only that he has a controlling interest in a body corporate be deemed for the purposes of this subsection to be entitled to give instructions to that body corporate as to the exercise of rights in respect of any security or coupon of which it is the holder; and
  - (b) a person shall not be deemed to hold a security or coupon as a nominee by reason only that he holds it as trustee if he is entitled to transfer the security or coupon without permission from any other person.
- (6) A certificate of title shall not for the purposes of this Part be treated as in the custody of an authorised depository if either —

- (a) the depositary has no notice of the nature of the certificate; or
  - (b) the certificate is deposited with him in a locked or sealed receptacle from which he is not entitled to remove it without the authority of some other person.
- (7) Where a certificate of title outside Tuvalu is by this Part required to be kept in the custody of an authorised depositary, it shall be deemed to be in the custody of an authorised depositary if —
- (a) by his direction or with his assent it is in the custody of some other person who holds it on behalf of and to the order of the authorised depositary; and
  - (b) the certificate is not deposited with that other person in a locked or sealed receptacle from which he is not entitled to remove it without the authority of a person other than himself;

and where a certificate of title is by virtue of this subsection deemed to be in the custody of an authorised depositary, references in this Part to the depositary parting with the certificate or a coupon belonging thereto shall be construed as references to his permitting the person having the actual custody thereof to part with it otherwise than to the depositary, and references to his destroying the certificate or such a coupon shall be construed as references to his permitting it to be destroyed.

## **PART IV - IMPORT AND EXPORT**

### **21 Restrictions on import**

- (1) The importation into Tuvalu of —
- (a) any notes of a class which are or have at any time been legal tender in the United Kingdom or any part of the United Kingdom; and
  - (b) any such other notes as may be specified by order of the Minister, being notes issued by a bank or notes of a class which are or have at any time been legal tender in any territory; and
  - (c) any certificate of title to any security, including any such certificate which has been cancelled, and any document certifying the destruction, loss or cancellation of any certificate of title to a security,

is hereby prohibited except with the permission of the Minister.

- (2) In this section the expression “note” includes part of a note and the expression “security” includes a secondary security.

## 22 General restrictions on export

- (1) The exportation from Tuvalu of —
- (a) any notes of a class which are or have at any time been legal tender in the United Kingdom or any part of the United Kingdom or in any other territory; and
  - (b) any postal orders; and
  - (c) any gold; and
  - (d) any of the following documents (including any such document which has been cancelled), that is to say —
    - (i) any certificate of title to a security and any coupon; and
    - (ii) any policy of assurance; and
    - (iii) any bill of exchange or promissory note expressed in terms of a currency other than that of a scheduled territory and payable otherwise than within the scheduled territories; and
    - (iv) any document to which section 4 applies not issued by an authorised dealer or in pursuance of a permission granted by the Minister;and any document certifying the destruction, loss or cancellation of any of the documents aforesaid; and
  - (e) any such articles exported on the person of a traveller or in a traveller's baggage as may be prescribed,

is hereby prohibited except with the permission of the Minister.

- (2) In this section, the expression “note” includes part of a note, the expression “security” includes a secondary security and the expression “coupon” shall be construed in accordance with the meaning of “security”.

## 23 Payment for exports

- (1) The exportation of goods of any class or description from Tuvalu to a destination in any such territory as may be prescribed is hereby prohibited except with the permission of the Minister, unless he is satisfied —
- (a) that payment for the goods has been made to a person resident in Tuvalu in such manner as may be prescribed in relation to goods of that class or description exported to a destination in that territory, or is to be so made not later than 6 months after the date of exportation; and

- (b) that the amount of the payment that has been made or is to be made is such as to represent a return for the goods which is in all the circumstances satisfactory in the national interest:

Provided that the Minister may direct that, in cases to which the direction applies, paragraph (a) shall have effect as if for the reference to 6 months there were substituted a reference to such longer or shorter period as may be specified in the direction, or as if the words “or is to be so made not later than 6 months after the date of exportation” were omitted.

- (2) For the purpose of satisfying himself in the case of any goods as to the matters specified in subsection (1), the Minister may require the person making entry of the goods for export to deliver to the collector or other proper officer together with the entry such declarations signed by such persons as he may require, and where such declaration has been so required the goods shall not be exported until it has been delivered as aforesaid.
- (3) Where the Minister is not satisfied in the case of any goods as to the matters specified in paragraph (b) of the said subsection (1), he shall give his reasons to the person making entry of the goods for export and shall take into consideration any representations made by him”
- (4) Any reference in this section to the destination of any goods includes a reference to the ultimate destination thereof.

## PART V - MISCELLANEOUS

### 24 Duty to collect certain debts

- (1) Except with the permission of the Minister, no person resident in Tuvalu who has a right (whether present or future and whether vested or contingent) to receive any specified currency, or to receive from a person resident outside the scheduled territories a payment in sterling or Fiji, Australian or New Zealand dollars shall do, or refrain from doing, any act with intent to secure or shall do any act which involves, is in association with or is preparatory to any transaction securing —
- (a) that the receipt by him of the whole or part of that currency or, as the case may be, of that payment in sterling or Fiji, Australian or New Zealand dollars, is delayed; or
- (b) that the currency or payment ceases, in whole or in part, to be receivable by him:

Provided that nothing in this subsection —

- (i) shall, unless the Minister otherwise directs, impose on any person any obligation, in relation to any debt arising in the carrying on of any trade or business, to procure the payment thereof at an earlier time than is customary in the course of that trade or business; or
  - (ii) shall, unless the Minister otherwise directs, prohibit any transfer to a person resident in Tuvalu and not elsewhere of any right to receive any specified currency or payment in sterling or Fiji, Australian or New Zealand dollars.
- (2) Where a person has contravened the provisions of subsection (1) in relation to any specified currency or payment in sterling or Fiji, Australian or New Zealand dollars, the Minister may give to him or to any other person who appears to the Minister to be in a position to give effect thereto (being a person in or resident in Tuvalu) such directions as appear to the Minister to be expedient for the purpose of obtaining or expediting the receipt of the currency or payment in question, and, without prejudice to the generality of the preceding provisions of this subsection, may direct that there shall be assigned to the Minister, or to such person as may be specified in the directions, the right to receive the currency or payment or enforce any security for the receipt thereof.

## **25 Duty not to delay sale or importation of goods**

- (1) Where —
- (a) any permission or consent has been granted under this Ordinance, or under any corresponding provision of the law in force in any territory comprised in the scheduled territories, subject to a condition providing that, or on the faith of an application stating an intention that, any goods should be sold outside the scheduled territories; or
  - (b) any statement or declaration has been made under any provision of this Ordinance or any such corresponding provision as aforesaid that any goods are to be sold outside the scheduled territories; or
  - (c) any currency has been obtained in, or by any person resident in the scheduled territories on the faith of an application stating an intention that any goods should be sold outside the scheduled territories,

then, except with the permission of the Minister, no person resident in Tuvalu who is entitled to sell or procure the sale of the said goods shall do, or refrain from doing, any act with intent to secure or shall do any act which involves, is in association with or is preparatory to any transaction securing —

- (i) that the said sale is delayed to an extent which is unreasonable having regard to the ordinary course of trade; or
  - (ii) that, on the said sale, any payment made for the goods is not made in the manner indicated by the condition, statement, or declaration, as the case may be.
- (2) Where —
- (a) any permission or consent has been granted under this Ordinance, or under any corresponding provisions of the law in force in any territory comprised in the scheduled territories, subject to a condition providing that, or on the faith of an application stating an intention that, any goods should be imported from outside the scheduled territories into any part of the scheduled territories; or
  - (b) any currency has been obtained in, or by any person resident in, the scheduled territories on the faith of an application stating an intention that any goods should be so imported,

then, except with the permission of the Minister, no person resident in Tuvalu who is entitled to procure the importation of the said goods shall do, or refrain from doing, any act with intent to secure that the importation thereof is delayed to an extent which is unreasonable having regard to the ordinary course of trade.

- (3) Where in any such case as is specified in paragraph (a), (b) or (c) of subsection (1), or paragraph (a) or (b) of subsection (2) —
- (a) the goods have not been sold or imported as indicated by the condition, statement or declaration within the time thereby indicated or, if no time is thereby indicated, a reasonable time or (in either case) within such further time as may be allowed by the Minister; or
  - (b) it appears to the Minister that the goods cannot be sold or imported as indicated by the condition, statement or declaration,

the Minister may give to any person resident in Tuvalu who appears to the Minister to be in a position to give effect thereto such directions as appear to him to be expedient as to the manner in which the goods are to be dealt with.

- (4) Without prejudice to the generality of the provisions of the last preceding subsection, the power conferred thereby on the Minister to give directions shall extend to the giving of directions that the goods shall be assigned to the Minister or to a person specified in the directions.
- (5) The powers conferred by the two last preceding subsections in relation to any goods shall extend to the giving of directions with respect to any

goods produced or manufactured therefrom, and, where goods to be sold outside the scheduled territories or to be imported were to be produced or manufactured from other goods, to the giving of directions with respect to those other goods and any goods produced or manufactured from those other goods.

## **26 Property obtained by infringement of Ordinance**

- (1) Where a person —
  - (a) has made any payment which is prohibited by this Ordinance; or
  - (b) being bound under this Ordinance to offer or cause to be offered any specified currency to an authorised dealer, has otherwise disposed of that currency,

the Minister may direct him to sell or procure the sale of any property which he is entitled to sell or of which he is entitled to procure the sale, being property which represents, whether directly or indirectly, that payment or that specified currency, as the case may be, and may by the same or a subsequent direction specify the manner in which, the persons to whom and the terms on which the property is to be sold.

- (2) Without prejudice to the generality of the provisions of subsection (1) of this section, the power conferred thereby on the Minister to give directions shall extend to the giving of directions that the property shall be assigned to the Minister or to a person specified in the directions.

## **27 Provisions supplemental to preceding provisions of Part V**

- (1) Where, under the preceding provisions of this Part, the Minister has power to give directions that any right to receive any currency or payment in sterling or Fiji, Australian or New Zealand dollars or to enforce any security for the receipt thereof, any goods, or any other property shall be assigned to the Minister, the Minister shall also have power to direct that the right, goods or property shall vest in the Minister, and it or they shall vest in the Minister accordingly free from any mortgage, pledge or charge, and the Minister may deal with it or them as he thinks fit.
- (2) Where, in pursuance of directions under the said provisions, any right, goods or property is or are assigned to the Minister or to a person specified in the directions, or any right, goods or property vests or vest in the Minister in pursuance of directions given under subsection (1), the Minister shall pay the net sum recovered by him in respect of the right, goods or property to the person making the assignment or, in the case of any right, goods or property vested in the Minister under subsection (1), to

the person who, but for the directions, would be entitled to the right, goods or property.

## **28 Transfer of annuities, policies, etc.**

- (1) Except with the permission of the Minister, no person resident in Tuvalu shall transfer to a person resident outside the scheduled territories, or who is to be a nominee for a person resident outside the scheduled territories, any right to the sums assured by any policy of assurance, so however, that where the person liable for the sums so assured makes any payment thereof to a person resident in the scheduled territories and not elsewhere, or makes, with the permission of the Minister, any payment thereof to any other person —
  - (a) he shall not be bound to inquire as to the residence of any person other than the person to whom, and (if it is not the same person) the person to whose order the payment is made; and
  - (b) the payment shall, to the extent of the sums paid, discharge him from his liability under the policy, notwithstanding that the payment is made to or to the order of a person who was not entitled thereto otherwise than by virtue of a transfer prohibited by this subsection”
- (2) Subsections (2) and (3) of section 18 shall apply in relation to any transfer prohibited by this section as they apply in relation to a transfer prohibited by this Ordinance of a security.
- (3) In this section, the expression “nominee” has, in relation to any policy, annuity or insurance, the same meaning as the said expression has in Part III in relation to a security.

## **29 Settlements**

- (1) Except with the permission of the Minister, no person resident in Tuvalu shall settle any property, otherwise than by will, so as to confer an interest in the property on a person who, at the time of the settlement, is resident outside the scheduled territories, or shall exercise, otherwise than by will, any power of appointment, whether created by will or otherwise, in favour of a person who, at the time of the exercise of the power, is resident outside the scheduled territories.
- (2) A settlement or exercise of a power of appointment shall not be invalid by reason that it is prohibited by this section, except so far as it purports to confer any interest on any person who, at the time of the settlement or the exercise of the power, is resident outside the scheduled territories.

- (3) Subsections (2) and (3) of section 18 shall apply in relation to a settlement or the exercise of a power of appointment prohibited by this section as they apply in relation to a transfer prohibited by this Ordinance of a security.
- (4) For the purpose of this section —
- (a) any reference to settling property includes a reference to the making of any disposition, covenant, agreement or arrangement whereby the property becomes subject to a trust, or (in the case of a resettlement) to a different trust; and
  - (b) a person shall be deemed to have an interest in property if he has any beneficial interest therein, whether present or future, and whether vested or contingent, or falls within a limited class of persons in whose favour a discretion or power in respect of the property is exercisable; and
  - (c) the expression “will” includes any testamentary disposition.
- (5) No person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to any such transaction outside Tuvalu as is referred to in this section.

### 30 Companies

- (1) Where there is served on any person resident in Tuvalu a notice in writing that the Minister wishes any such requirements as are hereinafter mentioned to be complied with by any such body corporate as is specified in Schedule 2 (hereafter in this subsection referred to as a “foreign company”), and that person can, by doing or refraining from doing any act —

#### *Schedule 2*

- (a) cause the foreign company to comply with any of the requirements; or
- (b) remove any obstacle to the foreign company complying with any of the requirements; or
- (c) render it in any respect more probable that the foreign company will comply with any of the requirements,

then, except so far as permission to the contrary may be given by the Minister, that person shall do, or, as the case may be, refrain from doing, that act.

The requirements with respect to which such a notice may be given are as follows, that is to say, that the foreign company shall —

- (i) furnish to the Minister such particulars as to its assets and business as may be mentioned in the notice;
  - (ii) sell or procure the sale to an authorised dealer of any gold or specified currency mentioned in the notice, being gold or specified currency which it is entitled to sell or of which it is entitled to procure the sale;
  - (iii) declare and pay such dividend as may be mentioned in the notice;
  - (iv) realise any of its assets mentioned in the notice in such manner as may be so mentioned;
  - (v) refrain from selling, transferring, or doing anything which affects its rights or powers in relation to, any such securities as may be mentioned in the notice.
- (2) Except with the permission of the Minister, no person resident in Tuvalu shall do any act whereby a body corporate which is by any means controlled (whether directly or indirectly) by persons in Tuvalu ceases to be controlled by persons resident in Tuvalu:

Provided that this subsection shall not prohibit any person from selling any securities authorised to be dealt in on any recognised stock exchange in Tuvalu if the sale takes place in pursuance of an agreement entered into in the ordinary course of business on that exchange.

No person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to any such transaction outside Tuvalu as is referred to in this subsection.

- (3) Except with the permission of the Minister, no person resident in Tuvalu shall lend any money or securities to any body corporate resident in the scheduled territories which is by any means controlled (whether directly or indirectly) by persons resident outside the scheduled territories:

Provided that this subsection shall not apply where the lender after making such inquiries as are reasonable in the circumstances of the case does not know and has no reason to suspect that the body corporate is controlled as aforesaid.

No person resident in the scheduled territories shall in Tuvalu do any act which involves, is in association with or is preparatory to any such transaction outside Tuvalu as is referred to in this subsection.

- (4) For the purposes of this section and of Schedule 2, persons resident in Tuvalu or outside the scheduled territories shall be deemed to control a body corporate notwithstanding that other persons are associated with them in the control thereof if they can together override those other persons.

- (5) In this section the expression “security” includes a secondary security.

## PART VI - SUPPLEMENTAL

### 31 Exemptions

Any provision of this Ordinance imposing any obligation or prohibition shall have effect subject to such exemptions as may be granted by order of the Minister, and any such exemption may be either absolute or conditional.

### 32 Blocked accounts

Where —

- (a) under any provision contained in Part II, the permission of the Minister is required for the making of a payment or the placing of any sum to the credit of any person resident outside the scheduled territories; or
- (b) any payment falls to be made by an authorised dealer on the sale of any gold or specified currency by any foreign company within the meaning of section 30 (1), being a sale made to comply with any requirement notified under that subsection,

the Minister may direct that the sum payable or to be credited shall be paid or credited to a blocked account only, and, where such a direction is given, the provisions of Schedule 3 shall have effect in relation to the payment or crediting of the sum.

*Schedule 3*

### 33 Contracts, legal proceedings, etc.

- (1) It shall be an implied condition in any contract that, where, by virtue of this Ordinance, the permission or consent of the Minister is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission or consent is given or is not required:

Provided that this subsection shall not apply in so far as it is shown to be inconsistent with the intention of the parties that it should apply, whether by reason of their having contemplated the performance of that term in despite of the provisions of this Ordinance or for any other reason.

*1882 c. 61*

- (2) Notwithstanding anything in the Bills of Exchange Act 1882, neither the provisions of this Ordinance, nor any condition, whether express or to be implied having regard to those provisions, that any payment shall not be made without the permission of the Minister under this Ordinance, shall be deemed to prevent any instrument being a bill of exchange or promissory note.

*Schedule 4*

- (3) The provisions of Schedule 4 shall have effect with respect to legal proceedings, arbitrations, bankruptcy proceedings, the administration of the estates of deceased persons, the winding up of companies, and proceedings under deeds of arrangement or trust deeds for benefit of creditors.

### **34 Enforcement and administration Schedule 5**

- (1) The provisions of Schedule 5 shall have effect for the purpose of the enforcement of this Ordinance.
- (2) Persons belonging to the following classes, that is to say —
- (a) bankers, authorised dealers, authorised depositaries;
  - (b) persons to whom any powers of the competent authority under this Ordinance are delegated;
  - (c) persons who with the permission of the competent authority are in possession of documents which would, but for the permission, have to be in the custody of an authorised depositary;
  - (d) persons concerned with the keeping of any register in Tuvalu; and
  - (e) persons entrusted with the payment of capital moneys, dividends or interest in Tuvalu,

shall comply with such directions as may be given to them respectively by the Minister, being —

- (i) in the case of any such persons, directions as respects the exercise of any functions exercisable by them by virtue of, or by virtue of anything done under, any provision of this Ordinance; or
- (ii) in the case of authorised dealers, such directions as aforesaid or directions as to the terms on which they are to accept gold or foreign currency or directions requiring them to offer their gold or specified currency for sale to the Bank of England on such terms as may be specified in any such directions.

### 35 Application to Crown

This Ordinance shall bind the Crown and shall apply to transactions by a Government department or other person acting on behalf of the Crown, and the competent authority shall not, by virtue of any contract made by them or on their behalf in relation to any securities, be under any obligation to grant any permission under Part III or any exemption from the provisions of Part III.

### 36 Transitional provisions and regulations

- (1) The Minister may by order make such transitional provisions as appear to him necessary or expedient in consequence of the exercise by him of any other power to make orders under this Ordinance”
- (2) The Minister may make such regulations as are, in his opinion, necessary for purposes ancillary to the principal objects of this Ordinance.

### 37 Other powers

- (1) Any permission, consent or authority granted under this Ordinance —
  - (a) may be either general or special;
  - (b) may be revoked by the Minister;
  - (c) may be absolute or conditional;
  - (d) may be limited so as to expire on a specified date, unless renewed; and
  - (e) shall be published in such a way as, in the opinion of the Minister, to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in his opinion publication is not necessary for that purpose.
- (2) Any directions given under any provision of this Ordinance —
  - (a) may be either general or special;
  - (b) may be revoked or varied by subsequent directions; and (c) shall be given to such persons and in such manner as the Minister thinks appropriate, and if so given shall be valid for all purposes.
- (3) Notwithstanding paragraph (c) of the last preceding subsection, a person shall not by virtue of any direction given by the Minister under this Ordinance, be convicted of an offence against this Ordinance, unless the direction was served on him or he knew, or avoided getting to know, of the giving thereof:

Provided that where reasonable steps were taken for the purpose of bringing the purport of the direction to his notice, it shall be for him to

show that he neither knew nor avoided getting to know of the giving thereof.

- (4) The Minister may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers (other than any power to make orders or to give authority to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Ordinance shall be construed accordingly.
- (5) Any document stating that any permission, consent, authority or direction is given under any of the provisions of this Ordinance by the Minister, and purporting to be signed on his behalf, shall be evidence of the facts stated in the document.

### **38 Financial provisions**

Any expenses incurred under or by virtue of this Ordinance by any Government department shall be paid out of the Consolidated Fund with the authority of the Commissioner, and any sums received under or by virtue of this Ordinance by any Government department shall be paid into the Consolidated Fund”

### **39 Branches**

- (1) The Minister may by order or direction provide that, for such of the purposes of this Ordinance as may be specified in the order or direction —
  - (a) any transaction with or by a branch of any business, whether carried on by a body corporate or otherwise, shall be treated in all respects as if the branch were a body corporate resident where the branch is situated; and
  - (b) the making of any book entry or other statement recording a debit against a branch of any business in favour of any other branch of that business shall be treated as a payment to that other branch; and
  - (c) any property held by or on behalf of the person carrying on the business shall be deemed to be held by such of the branches of the business as may be determined in accordance with the order or direction,

and any such order or direction which makes, for any of the purposes of Part III, such provision as is mentioned in paragraph (c) may contain provisions declaring the circumstances in which a branch is to be treated as nominee for any other branch.

- (2) Any reference in subsection (1) to a branch of a business shall be deemed to include a reference to the head office of that business.

- (3) Subsections (1) and (2) shall apply in relation to any body of persons (whether corporate or unincorporated) carrying on any activity, whether for the purpose of profit or not, as they apply in relation to a business.

#### 40 Persons leaving the scheduled territories

Where a person resident in Tuvalu leaves the scheduled territories, the Minister may, before, at or after the time he leaves the scheduled territories, direct that, for such period as may be specified in the direction, payments by him or on his behalf and to him or to his credit and transactions in or in relation to securities or secondary securities in which he is in any way concerned shall, whether or not he continues to be resident in Tuvalu, be subject to such restrictions as may be specified in the direction.

#### 41 Determination of residence

- (1) For the purposes of this Ordinance, a personal representative of a deceased person shall, unless the Minister otherwise directs, be treated as resident in the territory where the deceased person was resident for the purposes in question at the time of his death and as not resident elsewhere, so far as relates to any matters in which the personal representative is concerned solely in his capacity as such.
- (2) The Minister may give directions declaring that for all or any of the purposes of this Ordinance a person is to be treated as resident or not resident in such territories as may be specified in the directions.

#### 42 General provisions as to interpretation

- (1) In this Ordinance, except so far as the contrary is expressly provided or the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say —

“**authorised dealer**” means, in relation to gold or any foreign currency, a person for the time being authorised by an order of the Minister to act for the purposes of this Ordinance as an authorised dealer in relation to gold, or, as the case may be, that foreign currency;

“**authorised depositary**” means a person for the time being authorised by an order of the Minister to act as an authorised depositary for the purposes of Part III;

“**bearer certificate**” means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

“**certificate of title to securities**” means any document of title whereby a person recognises the title of another to securities issued or to be issued by the first-mentioned person, and in the case of any such document with coupons (whether attached or on separate coupon sheets) includes any coupons which have not been detached;

“**coupon**” means a coupon representing dividends or interest on a security;

“**foreign currency**” has the meaning ascribed to it by section 1;

“**gold**” means gold coin or gold bullion;

“**policy of assurance**” means any policy securing the payment of a capital sum or annuity on the occurrence of a specified event which is certain to happen and includes —

(a) any policy by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life; and

(b) any policy securing the payment of an immediate annuity;

and the reference in this definition to the occurrence of a specified event which is certain to happen shall include the occurrence, which is certain to happen, of one of specified events none of which by itself is certain to happen;

“**prescribed**” means prescribed, for the purposes of the provision in question, by order of the Minister;

“**scheduled territories**” has the meaning ascribed to it by section 1;

“**secondary securities**” has the meaning ascribed to it by section 19;

“**securities**” means shares, stock, bonds, notes (other than promissory notes), debentures, debenture stock, units under a unit trust scheme and shares in an oil royalty;

“**specified currency**” has the meaning ascribed to it by section 2 as extended by section 4;

“**sterling**” means United Kingdom currency;

“**unit trust scheme**” means any arrangements made for the purpose, or having the effect, of providing for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of any property whatsoever;

“**unit**” means, in relation to a unit trust scheme, a right or interest (whether described as a unit, a sub-unit or otherwise) which may be acquired under the scheme”

- (2) Any provision of this Ordinance (however worded) the effect of which is to prohibit the doing of any act where a person to or by whom the act is to be done or who stands in a specified relation to any property possesses any specified attribute as to residence or otherwise shall, where the act is done to or by 2 or more persons or, as the case may be, where 2 or more persons stand jointly in that relation to the property, operate to prohibit the doing of that act if any of those persons possess that attribute; and any provision of this Ordinance imposing an obligation on any person to do an act if he possesses any specified attribute as to residence or otherwise shall, in relation to any act which can only be done by 2 or more persons jointly —
- (a) where all those persons possess that attribute, operate to impose a joint obligation on all of them to do the act; and
  - (b) where some only of them possess that attribute, operate to impose a separate obligation on each one of them who possesses that attribute to do all he can to secure the doing of the act.
- (3) Any power conferred by this Ordinance to prescribe the declarations which are to be furnished on any occasion shall include a power to require that the declarations shall be made by specified persons and shall be verified in a specified manner.
- (4) Nothing in this Ordinance shall be construed as requiring the Minister to pay any sum otherwise than in sterling or Fiji, Australian or New Zealand dollars or otherwise than in Tuvalu, and any provision of this Ordinance requiring the Minister to pay any sum to any person shall, where that sum is in a specified currency, be construed as a provision that the Minister shall pay to that person the amount in sterling or Fiji, Australian or New Zealand dollars which he would have received for the specified currency if he had sold it to an authorised dealer in pursuance of an offer made under section 2 at the time when the said sum is paid.
- (5) The obligations and prohibitions imposed by this Ordinance shall, subject to the express limitations contained therein apply to all persons, notwithstanding that they are not Citizens of Tuvalu.

### 43 Short title

This Ordinance may be cited as the Exchange Control Ordinance.

**SCHEDULE 1****SCHEDULED TERRITORIES**

(Section 1)

1. The fully self-governing countries of the British Commonwealth except Canada
2. Any Colony under the dominion of Her Majesty
3. Any territory administered by the government of any part of Her Majesty's dominions under the trusteeship system of the United Nations
4. Any British protectorate or British protected state
5. South-West Africa
6. The Irish Republic
7. Iceland
8. Burma
9. The Hashemite Kingdom of the Jordan
10. The United Kingdom of Libya

**SCHEDULE 2****FOREIGN COMPANIES**

(Section 30)

1. The bodies corporate in question are bodies corporate not incorporated under the law of Tuvalu in the case of which any of the following conditions is fulfilled —
  - (a) that the body corporate is by any means controlled (whether directly or indirectly) by persons resident in Tuvalu;
  - (b) that more than one-half of the sums which, on a liquidation thereof, would be receivable by holders of share or loan capital would be receivable directly or indirectly by or for the benefit of persons resident in Tuvalu;
  - (c) that more than one-half of the assets which, on a liquidation thereof, would be available for distribution after the payment of creditors

- would be receivable directly or indirectly by or for the benefit of persons resident in Tuvalu; or
- (d) that more than one-half —
- (i) of the interest payable on its loans and loan capital, if any; or
  - (ii) of the dividends payable on its preference share capital, if any; or
  - (iii) of the dividends payable on its share capital, if any, not being preference share capital,
- is receivable, directly or indirectly, by or for the benefit of persons resident in Tuvalu.
2. Where the identity of the persons by whom or for whose benefit any sum, assets, interest or dividends are directly or indirectly receivable depends on the exercise by a person resident in Tuvalu of a power of appointment or similar power, the sum, assets, interest or dividends shall, for the purposes of this Schedule, be deemed to be receivable directly or indirectly by or for the benefit of persons resident in Tuvalu.

### **SCHEDULE 3**

#### **BLOCKED ACCOUNTS**

##### **(Section 32)**

1. In this Schedule, the expression “a blocked account” means an account opened as a blocked account at an office or branch in Tuvalu in favour of any person by a banker authorised by the Minister to open blocked accounts, and the expression “the banker” means, in relation to any person, a banker who opens a blocked account in favour of that person.
2. Where a direction is given that a payment is to be made to a blocked account only, then, subject to the next following paragraph —
- (a) the manner in which the payment may be made shall be either —
    - (i) to the banker, with a direction that it is to be credited to a blocked account of that person (which direction may, in the case of a payment by means of a cheque or warrant, be made by marking the cheque or warrant with the words “blocked account of” (naming the person in question) or words to the same effect); or
    - (ii) by a crossed cheque or warrant drawn in favour of that person, marked with the words “payable only to blocked account of payee” or words to the same effect; and

- (b) the sum collected shall be credited by the banker to a blocked account of that person.
3. Where a direction is given that a sum is to be paid or credited to a blocked account only, then, notwithstanding the direction, the sum may, with the consent of the person to whom it is to be paid or credited, and subject to the requirements of Part III, be invested instead in the purchase for that person of any such investments as may be prescribed for the purposes of paragraph (a) of the proviso to the next following paragraph.
4. Any sum standing to the credit of a blocked account shall not be dealt with except with the permission of the Minister:
- Provided that, subject to compliance with the requirements of Part 111 —
- (a) the whole or any part of any such sum may, at the request of the person in whose name the account stands, be invested through the banker in such investments as may be prescribed; and
- (b) nothing in this Schedule shall be construed as restricting the manner in which the investments acquired may be dealt with.
5. Where a person in whose name a blocked account is standing becomes bankrupt in Tuvalu or dies, the banker may, notwithstanding anything in paragraph 4 of this Schedule, transfer the account to the name of the trustee in bankruptcy or personal representative, but, save as aforesaid, no change shall, except with the permission of the Minister, be made in the name in which the account stands; and where any such change is made (whether or not the permission of the Minister is necessary therefor) the account shall remain a blocked account notwithstanding the change, and the provisions of this Schedule shall apply accordingly.
6. Where —
- (a) a sum is due from any person to any other person but the Minister directs that it shall be paid or credited to a blocked account only; and
- (b) the person to whom the sum is due nominates such an account to the person from whom the sum is due,

the last mentioned person is under a duty to the person to whom the sum is due to cause the sum to be paid or credited to that blocked account, and the crediting of any sum to a blocked account in pursuance of a direction of the Minister shall, to the extent of the sum credited, be a good discharge to the person from whom the sum is due:

Provided that in the case of a sum due under a contract this paragraph shall not apply in so far as it is shown to be inconsistent with the intention of the parties that it should apply.

**SCHEDULE 4****LEGAL PROCEEDINGS, ETC.**

## (Section 33)

1. The provisions of Part II shall apply to sums required to be paid by any judgment or order of any court or by any award as they apply in relation to other sums, and it shall be implied in any judgment or order of any court in Tuvalu, and in any award given under the law of Tuvalu, that any sum required to be paid by the judgment, order or award (whether as a debt, as damages or otherwise) to which the said provisions apply shall not be paid except with the permission of the Minister.
2. Nothing in this Ordinance shall be construed as preventing the payment by any person of any sum into any court in Tuvalu but the provisions of Part II shall apply to the payment of any sum out of court, whether under an order of the court or otherwise, to or for the credit of any person resident outside the scheduled territories.
3. Without prejudice to the provisions of any enactments relating to the making of rules of court, rules of court —
  - (a) enabling any person who is required by any judgment, order or award to pay any sum, if he apprehends that the payment of that sum is unlawful under this Ordinance except with the permission of the Minister, to pay that sum into court; and
  - (b) declaring that payment of a sum into court by virtue of the preceding sub-paragraph, together with the delivery to the other party concerned of such evidence of the payment as may be prescribed by the rules, shall, to the extent of the payment, be a good discharge to the person making the payment; and
  - (c) so regulating the process of execution which may issue in respect of any sum required to be paid by any judgment, order or award as to secure that, unless it is shown, in such manner as may be prescribed by the rules, that the permission of the Minister for the payment of the sum is not required under this Ordinance or has been given without conditions, the proceeds of the execution will be paid into court, and, so far as is necessary for that purpose, varying the form of any writ of execution or other similar document or the duties of the sheriff or other officer to whom any such writ or other similar document is directed,

may be made by the appropriate rule making authority:

Provided that the form of any bankruptcy notice shall be such as may be prescribed by the Minister.

- 4.(1) In any proceedings in a prescribed court and in any arbitration proceedings, a claim for the recovery of any debt shall not be defeated by reason only of the debt not being payable without the permission of the Minister and of that permission not having been given or having been revoked.
- (2) No court shall be prescribed for the purpose of this paragraph unless the Minister is satisfied that adequate provision has been made therefor by rules of court for the purposes specified under paragraph 3.
- 5.(1) In any bankruptcy, in the winding up of any company or in the administration of the estate of any deceased person (being a bankruptcy, winding up or administration carried on under the law of Tuvalu), a claim for a sum not payable without the permission of the Minister shall, notwithstanding that the permission has not been given or has been revoked, be admitted to proof as if it had been given and had not been revoked:

Provided that nothing in this sub-paragraph shall be construed as affecting the application of the provisions of Part II to payments by any trustee, liquidator, personal representative or other person in any such bankruptcy, winding up or administration.

- (2) The provisions of this Ordinance restricting the making of settlements shall not apply to any deed of arrangement made for the benefit of creditors generally, and the provisions of sub-paragraph (1) shall apply in relation to proceedings under any deed of arrangement as they apply in relation to proceedings in bankruptcy.
6. A debt for the payment of which the permission of the Minister is required under this Ordinance shall, if in other respects it complies with the requirements of the law of Tuvalu relating to bankruptcy, be allowed to be a good petitioning creditor's debt, notwithstanding the said requirement, if and to the extent that the debt can be satisfied either by a payment into court or by a payment to a blocked account.

**SCHEDULE 5****ENFORCEMENT**

(Section 34)

**PART I***General provisions as to evidence and information*

1. (1) Without prejudice to any other provisions of this Ordinance, the Minister may give to any person in or resident in Tuvalu directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to him, or to any person designated in the directions as a person authorised to require it, any information in his possession or control which the Minister or the person so authorised, in the case may be, may require for the purpose of securing compliance with or detecting evasion of this Ordinance.
  - (2) A person required by any such directions as aforesaid to furnish information shall also produce such books, accounts or other documents (hereafter in this Part of this Schedule referred to as “documents”) in his possession or control as may be required for the said purpose by the Minister or by the person authorised to require the information, as the case may be.
  - (3) Nothing in the preceding provisions of this paragraph shall be taken to require any person who has acted as counsellor solicitor for any person to disclose any privileged communication made to him in that capacity.
  - (4) Where a person is convicted on indictment for failing to give information or produce documents when required so to do under this paragraph, the court may make an order requiring the offender, within such period as may be specified in the order, to comply with the requirement to give the information or produce the documents”
2. (1) If the court is satisfied by information on oath given by a person authorised by the Minister to act for the purposes of this paragraph either —
    - (a) that there is reasonable ground for suspecting that an offence against this Ordinance has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or

- (b) that any documents which ought to have been produced under the preceding paragraph and have not been produced are to be found at any such premises or in any such vehicle, vessel, or aircraft,

they may grant a search warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within 1 month from the date of the warrant, and to search the premises or, as the case may be, the vehicle, vessel or aircraft.

- (2) A person authorised by any such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft, may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any article found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing to be evidence of the commission of any offence against this Ordinance or any documents which he has reasonable ground for believing ought to have been produced under the preceding paragraph:

Provided that no female shall, in pursuance of any warrant issued under this paragraph, be searched except by a female.

- (3) Where, by virtue of this paragraph, a person has any power to enter any premises, he may use such force as is reasonably necessary for the purpose of exercising that power.

3. (1) Any article coming into the possession of an executive authority (whether in consequence of the seizure of the article under or by virtue of this Ordinance or otherwise) which the authority has reasonable ground for believing to be evidence of the commission of an offence against this Ordinance may be retained for a period of 3 months or, if within that period there are commenced proceedings in respect of such an offence in which the article is, or can properly be, adduced in evidence, until the final determination of those proceedings.

- (2) For the purposes of this paragraph, any person to whom any powers of the Minister under this Ordinance are delegated or on whom any functions are conferred by or by virtue of this Ordinance, including any police officer, shall be deemed to be an executive authority.

- (3) For the purposes of this paragraph, any proceedings shall be deemed not to have been finally determined so long as there is pending any appeal in the matter of proceedings, and an appeal in that matter shall be deemed to be pending during the ordinary time within which such an appeal may be lodged, and, if such an appeal is duly lodged, the appeal shall be deemed to be pending until it is decided or withdrawn.

- (4) The powers conferred by this paragraph in relation to any article shall be in addition to, and not in derogation of, any powers otherwise exercisable in relation thereto.
4. No person in or resident in Tuvalu shall —
- (a) with intent to evade the provisions of this Ordinance, destroy, mutilate, deface, secrete or remove any documents;
  - (b) in furnishing any information for any of the purposes of this Ordinance, make any statement which he knows to be false in a material particular, or recklessly make any statement which is false in a material particular;
  - (c) obstruct any person in the exercise of any powers conferred on him by virtue of this Part.

## PART II

### *General provisions as to offences*

1. (1) Any person in or resident in Tuvalu who contravenes any restriction or requirement imposed by or under this Ordinance, and any such person who conspires or attempts, or aids, abets, counsels or procures any other person, to contravene any such restriction or requirement as aforesaid, shall be guilty of an offence punishable under this Part:

Provided that an offence punishable by virtue of Part III of this Schedule shall not be punishable under this Part.

- (2) Where an offence punishable under this Part has been committed by a body corporate, any person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the contravention was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.
- (3) Any person who commits an offence punishable under this Part shall be Liable —
- (a) on summary conviction, to imprisonment for 3 months and to a fine;
  - (b) on conviction on indictment, to imprisonment for 2 years and to a fine;

and where the offence is concerned with any currency, any security, any gold, any goods or any other property, the court may, if it thinks fit so to do, order the currency, security, gold, goods or property to be forfeited.

- (4) Except in the case of a body corporate convicted on indictment, the maximum fine which may be imposed for an offence punishable under this Part shall be —
- (a) on summary conviction \$1000; and
  - (b) on conviction on indictment \$2000;
- so, however, that (in either case) where the offence is concerned with any currency, any security, any payment, any gold, any goods or any other property, and does not consist only of a failure to give information or produce books, accounts or other documents with respect thereto when required so to do under Part I of this Schedule, a larger fine may be imposed not exceeding 3 times the amount or value of the currency, security, payment, gold, goods or property.
2. (1) No proceedings for an offence punishable under this Part shall be instituted, except by or with the consent of the Attorney-General:
- Provided that this sub-paragraph shall not prevent the issue or execution of a warrant for the arrest of any person in respect of such an offence, or the remanding in custody or on bail of any person charged with such an offence.
- (2) Proceedings against any person in respect of an offence punishable under this Part may be taken before the appropriate court in Tuvalu having jurisdiction in the place where that person is for the time being.
  - (3) Any proceedings under a law establishing summary jurisdiction which may be taken against any person in respect of any offence punishable under this Part may, notwithstanding anything to the contrary in that law, be taken at any time within 12 months from the date of the commission of the offence or within 3 months from the date on which evidence sufficient in the opinion of the Minister to justify the proceedings comes to the knowledge of the Minister, whichever period last expires, or, where the person in question was outside Tuvalu at the date last mentioned, within 12 months from the date on which he first arrives in Tuvalu thereafter.
  - (4) For the purposes of this paragraph a certificate of the Minister as to the date on which such evidence as aforesaid came to the knowledge of the Minister shall be conclusive evidence thereof.
3. The maximum period of imprisonment that may be imposed by a court of summary jurisdiction in Tuvalu:
- (a) in respect of the non-payment of a sum adjudged to be paid by a conviction for an offence punishable under this Part; or
  - (b) in respect of the default of a sufficient distress to satisfy any such sum, shall, in cases where the sum exceeds \$40, be increased in accordance with the following scale, that is to say, —

Where the amount of the sum adjudged to be paid by the conviction, as ascertained by the conviction,	The said period shall not exceed
exceeds \$40 but does not exceed \$200.....	4 months
Exceeds \$200.....	6 months

**PART III**

*Import and export*

1. (1) The enactments relating to customs shall, subject to such modifications, if any, as may be prescribed to adapt them to this Ordinance apply in relation to anything prohibited to be imported or exported by any of the provisions of Part IV of this Ordinance except with the permission of the Minister as they apply in relation to goods prohibited to be imported or exported by or under any of the said enactments, and any reference in the said enactments to goods shall be construed as including a reference to anything prohibited to be imported or exported by any of the provisions of the said Part IV except with the permission of the Minister.

(2) References in this paragraph to the enactments relating to customs shall be taken as including references to the Customs Ordinance.

*Cap. 55*

2. Any declaration required to be given under Part IV of this Ordinance shall, for the purposes of the Customs Ordinance, be deemed to be a declaration in a matter relating to customs.

*Cap. 55*

3. If anything prohibited to be exported by any provision of the said Part IV is exported in contravention thereof, or is brought to a quay or other place, or water-borne, for the purpose of being so exported, the exporter or his agent shall be liable to the same penalty as that to which a person is liable for an offence to which the Customs Ordinance applies.

*Cap. 55*

4. Without prejudice to any of the preceding provisions of this Part, any person who, on any occasion, is about to leave Tuvalu or arrives in Tuvalu (which person is hereafter in this paragraph referred to as “the traveller”) shall, if on that occasion he is required so to do by an officer of customs or an immigration officer —

- (a) declare whether or not he has with him anything prohibited to be imported or exported by any of the provisions of the said Part IV except with the permission of the Minister; and
- (b) produce any such thing as aforesaid which he has with him,

and the officer may examine or search any article which the traveller has with him for the purpose of ascertaining whether he is conveying or has in his possession any such thing, and, if the officer has reasonable grounds for suspecting that the traveller has about his person any such thing, search him, and may seize anything produced as aforesaid or found upon such examination or search as aforesaid as to which the officer has reasonable ground for suspecting that it is prohibited to be imported or exported by any of the provisions of the said Part IV except with permission of the Minister:

Provided that no female shall be searched in pursuance of this paragraph except by a female.

5. Paragraph 1(2) of Part II of this Schedule shall apply also to offences punishable by virtue of this Part.

**ENDNOTES**

**Table of Legislation History**

Legislation	Year and No	Commencement

**Table of Renumbered Provisions**

Original	Current

**Table of Endnote References**